IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ABINGDON DIVISION

UNITED STATES OF AMERICA)	
)	Case No. 1:04CR00009-001
)	Cuse 110. 1.0 Tele00007 001
V.)	OPINION
)	
TRADON MARQUEZ DRAYTON,)	By: James P. Jones
)	United States District Judge
)	
Defendant.)	

Tradon Marquez Drayton, Pro Se.

The defendant, Tradon Marquez Drayton, sentenced to prison by this court in 2006, has filed a pro se motion entitled "Motion for Writ of Audita Querela Pursuant to 28 U.S.C. § 1651(a)," in which he requests the court to reconsider a Motion to Dismiss denied prior to his trial.

Drayton was convicted by a jury and on appeal, the judgment was affirmed. *United States v. Drayton*, 267 F. App'x 192 (4th Cir. 2008) (unpublished). His later motion under 28 U.S.C.A. § 2255 (West Supp. 2012) was denied. *United States v. Drayton*, No. 1:04CR00009, 2010 WL 4136144 (W.D. Va. Oct. 21, 2010), *appeal dismissed*, 415 F. App'x 490 (4th Cir. 2011).

Common law writs under the All Writs Act are not available to a defendant to raise claims that were or could have been raised through other remedies, such as

a motion for new trial or a motion to vacate sentence under 28 U.S.C.A. § 2255.

See, e.g., United States v. Johnson, 237 F.3d 751, 755 (6th Cir. 2001) (writ of error

coram nobis); United States v. Valdez-Pacheco, 237 F.3d 1077, 1080 (9th Cir.

2001) (writ of audita querela). Because the defendant's challenge to the legality of

his sentence could have been raised in a § 2255 motion, the defendant cannot

recast the claim as arising under § 1651. I will thus treat his motion as one under

§ 2255.

This court may consider a second or successive § 2255 motion only upon

specific certification from the United States Court of Appeals for the Fourth

Circuit that the claims in the motion meet certain criteria. See 28 U.S.C.A.

§ 2255(h). The defendant previously filed a § 2255 motion concerning this same

conviction and sentence. Because the defendant offers no indication that he has

obtained certification from the court of appeals to file a second or successive §

2255 motion, I must dismiss his current action without prejudice. A separate order

will be entered.

DATED: August 20, 2012

/s/ James P. Jones

United States District Judge

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